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Analysis of market access issues facing developing countries: Consumer interests, competitiveness, competition and development

Note by the UNCTAD secretariat

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I. Background and mandate

1. UNCTAD X requested UNCTAD to "strengthen the capacity of public institutions for competition and consumer protection in developing countries and help them to educate the public and representatives of the private sector in this field" (Plan of Action, para. No.141). The Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for Control of Restrictive Business Practices (25 to 29 September 2000) decided in its resolution *inter alia* that UNCTAD should:

> "(a) Provide support to public authorities on competition and on consumer protection and assist them in educating the public and representatives of the government and private sectors in the field of competition law and policy"; and
>
> "(c) Study the feasibility of establishing a UN World Competition and Consumer Day as a means of publicizing benefits to consumers of competition policy and educating the public at large."

2. In addition, the conference invited UNCTAD "to consider convening an Expert Meeting on Consumer Policy as a distinct body from the Intergovernmental Group of Experts on Competition Law and Policy".

3. Accordingly, the Expert Meeting on Consumer Interests, Competitiveness, Competition and Development was convened as a distinct body from the Intergovernmental Group of Experts on Consumer Law and Policy, which met in July 2001, to discuss more particularly consumer issues in relation to competitiveness and development, the Intergovernmental Group of Experts being more specifically the forum where competition experts monitor the implementation of the UN Set of Principles and Rules on Competition.[1] The Expert Meeting was held in Geneva from 17 to19 October 2001, and attracted considerable interest among experts from capitals in developed and especially developing countries, as shown by the number of participants. There were more than 70 participants, over half of whom came from capitals. Also present were representatives of the World Trade Organization, the United Nations Industrial Development Organization and the International Monetary Fund, as well as the Arab Labour Organization and the South Centre. In addition, there was considerable representation from civil society, including Consumers International, the International Chamber of Commerce, the International Confederation of Free Trade Unions and the Europe-Third World Centre.

II. Summary of the main issues discussed by the Expert Meeting

4. The Expert Meeting offered the opportunity for an enriching exchange of expertise and experiences concerning the relevance of competition and consumer policies for enhancing competitiveness in developing countries and economies in transition. The importance of national and regional traditions and cultures was stressed as the background against which the content and

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[1] See TD/RBP/CONF.10/Rev.2

the implementation of competition and consumer protection laws and policies should be defined. The discussions covered member countries' relevant experiences in relation to (a) globalization, competition, competitiveness and consumer protection; (b) national competition law and policy, regulation and consumer welfare; and (c) public policy and capacity-building for rule-making and enforcement.

5. Under the first theme, the experts discussed the impact of globalization and market-oriented economic reforms on the competitiveness of developing countries, and in particular on the welfare of consumers. Special attention was devoted to the poor and to ways and means of protecting consumers in general against the vagaries of application of open market policies without adequate rules and enforcement, especially in the least developed countries.

6. It was noted that although market-oriented economic reforms should increase competition and serve consumer interests, in many cases this did not happen. Foreign firms often took advantage of the liberalization of trade and foreign direct investment to dump substandard products with hazardous consequences for consumers. In other instances, including privatizations, firms took advantage of weak Governments to monopolize markets. Competition rules, which ultimately benefit consumers, were urged. It was noted, however, that it was not sufficient merely to adopt legislation: countries still had to be able to enforce it appropriately. Examples were cited of authorities lacking resources to investigate complaints, and of large firms able to exert political influence against decisions providing relief.

7. It was recognized that consumers in developing countries, especially the illiterate and the poor, suffered most from market failures and asymmetry of information. There was a need to adopt consumer protection legislation, but consumer education efforts were also needed, especially to inform low-income and illiterate consumers about their rights and duties. The magnitude of the efforts needed was such that international cooperation was essential.

8. The second theme – national competition law and policy, regulation and consumer welfare – was a logical follow-up to the discussion about what was being done or should be done at the national level. It was pointed out that competition laws and consumer protection shared the same goals, namely the defence of consumer interests, but that the two were considered to be complementary, especially in developing countries, where a large part of the population was often below the poverty line and could not automatically benefit from competition policy. While effective competition policy could benefit consumers indirectly, consumer protection rules were necessary in order to take care of consumers' immediate concerns. For example, consumers were easy targets for unscrupulous sellers cheating on weights and measures, quality standards, and so forth, as well as for misrepresentations and misleading advertising. Developing countries, especially least developed countries, still had considerable efforts to make in this respect.

9. It was considered that the position of consumers in the market was often very weak, facing as they did organized and well-informed suppliers. Hence there was a need for consumers to organize themselves and to form consumer associations. Moreover, individual consumers were extremely weak where thy suffered injury and attempted to secure redress. Courts were slow, and

legal action was expensive and complicated, especially for the low-income population. The experts examined the means of facilitating consumer redress mechanisms, such as small claims courts and class actions, which existed in some countries, to expedite cases.

10. The experts also considered the need for international cooperation in cases where domestic law did not have the necessary extra - territorial reach. This was increasingly evident as a result of progress in telecommunications and the Internet and e-commerce, where misleading advertising and misrepresentations, as well as theft, might occur without the possibility of redress for consumers in one country who suffered injury due to action by suppliers in another country.

11. Finally, the case of the informal economy in developing countries was raised, and proposals were made for trying to harness the potentialities of this sector in order to accelerate the development of those countries. Micro-finance institutions were considered important in this respect, as they enabled informal market operators to access human, technical and financial resources. It was proposed that Governments study ways and means of using the potential of their informal economy, rather than combating it.

12. Under the third theme – public policy and capacity-building for rule-making and enforcement – the role of Governments, enterprises and consumer associations in the promotion of competition was emphasized. Governments were invited to coordinate their consumer protection policies with both entrepreneurs and consumer representatives. It was pointed out that civil society organizations in many developing countries complemented and supported government initiatives in this area. Independent consumer groups should strive for a proactive dialogue and partnership with Governments. In this connection, consumer groups could assist in making consumers aware of their rights under the various legal frameworks governing consumer protection. The establishment of networking mechanisms to reach rural consumers was seen as an important step towards reaching remote areas of developing countries.

III. Findings and proposals

13. In its Outcome, which is available in its (document TD/B/COM.1/43; TD/B/COM.1/EM.17/4), the Expert Meeting noted that properly implemented competition and consumer policies could make a key contribution to competitiveness and development. While recognizing that globalization and liberalization of goods and services markets had the potential to improve consumer welfare in many countries, the meeting noted that market failures, especially in developing countries, posed major challenges to consumers in poor and rural areas, where consumers could be easily misled by all sorts of unfair or fraudulent business practices, such as misleading advertising and the sale of substandard and hazardous goods and services. In some cases, privatization and deregulation had taken place with scant regard for consumer interests, and often in the absence of legal and institutional frameworks for consumer protection. It was proposed in this connection that States take special care in ensuring that privatization of utilities and other "natural monopolies" did not result in private sector monopolies adversely affecting private consumers and other users. In the light of these findings, the Expert Meeting made a number of proposals for consideration by the Commission on Trade in Goods and Services, and Commodities

at its sixth session. The full text of these proposals are contained in the Outcome of the Expert Meeting, and are summarized below.

14. *At the national level*, the Expert Meeting suggested that *Governments* take the necessary steps to implement the UN Guidelines for Consumer Protection, as extended in 1999 to cover sustained consumption. In this connection, the experts proposed that Government develop and maintain competition and consumer protection policies and laws which are mutually reinforcing, with a view to promoting competitive markets, consumer welfare, competitiveness and development.

15. It was proposed that consumer interests be better taken into account at all decision-making levels in government, and that specific channels and mechanisms be created in this respect. In applying consumer protection laws and other regulations, Governments were invited to take care to ensure that measures benefit all sectors of the population, particularly the informal sector and the poor.

16. Special emphasis was placed on the need to encourage consumer information and education programmes, especially for illiterate consumers in rural and other areas.

17. *Enterprises* were invited to conform with relevant national laws and regulations, and with the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

18. *Consumer associations* were called on to develop regional training and information programmes for consumers in cooperation with government, business, international organizations and academia.

19. Finally, measures *at the international level* were mainly directed to UNCTAD.

IV. Follow-up action

20. In line with the proposals for action at the international level in the Outcome of the Expert Meeting which are directed to UNCTAD, the Commission on Trade in Goods and Services, and Commodities may wish to consider:

(a) Requesting the UNCTAD secretariat to:

(i) Monitor the implementation of the UN Guidelines for Consumer Protection, including in cooperation with other relevant international organizations, with a view to promoting consumer interests within the United Nations;

(ii) Provide technical assistance to member countries upon request and, resources – permitting, help them adopt and enforce consumer laws and policies as well as competition laws and policies;

(iii) Prepare a model law or laws on consumer protection for use by developing countries; and

(iv) Create and maintain a consumer protection website containing relevant information on laws, policies, activities and international agreements containing consumer-related provisions;

(b) Convening further Expert Meetings on consumer interests, namely on:

(i) Protection of consumers and regulation of public services; and/or;

(ii) International cooperation mechanisms for consumer protection, including in relation to cross-border transactions;

(c) Giving guidance to UNCTAD in its work on competition and consumer policies to further study the interface between competition, consumer interests, competitiveness and development, so as to generate more growth, employment and export opportunities.